

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 95 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

BHAVSAR KALIDAS VELANI

Versus

PATL LALJI JIVA

Appearance:

MR BD KARIA for Petitioner
MR AG VYAS for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/07/1999

ORAL JUDGEMENT

1. The present appellant filed a suit against the present respondent before the learned Civil Judge, (JD), Botad - Gadhada, being Regular Civil Suit No. 80 of 1978 for the recovery of Rs.1,637 from the present respondent. The suit of the plaintiff was based on the accounts settled for the sum of Rs. 1,225/- and said to have been

signed by the respondent on 11th October, 1973 as a result of accounts of the past transactions. The respondent defendant resisted the suit and he denied to

have signed the said settled accounts for the sum of Rs.1,225/- on 11th October,1973. Defendant stated that he had purchased cloth worth of Rs. 450/- in the month of May, 1968 and had paid Rs.100/- towards the sum of the appellant in the month of December, 1969. Therefore, according to the defendant, Rs. 350/- are only due to the plaintiff from him. At the time of paying Rs.100/- in the month of December, he has signed some blank pages in the khata as stated by the appellant and further the defendant stated that the appellant must have subsequently utilised the same for the purpose of preparing the settled accounts for the sum of Rs. 1,225/- dated 11th October, 1973.

2. Trial Judge after framing of issues and recording of the evidence and after hearing the parties, came to the conclusion that the account settled was not proved by the plaintiff and as admitted by the defendant, a decree against the defendant in the sum of Rs.450/- was passed and dismissed the suit of the plaintiff for the rest of the amounts and hence the plaintiff filed the Appeal before the District Court at Bhavnagar being Regular Civil Appeal No. 77 of 1980. Learned District Judge, Bhavnagar, came to the conclusion that there was no question of law involved in the Appeal because the amount which was involved in the Appeal was below Rs.3,000/- and as per Sec. 96(4) of the Civil Procedure Code, the appeal was maintainable on the law point only and according to the learned District Judge, no law point is involved in the appeal. The appellant tried to make out

a point that mere execution of a document based on a presumption of passing of the consideration and that was the law point. The District Court negating the arguments and said that the execution of documents is not proved that it was for consideration specifically when execution was denied and, therefore, no law point was involved in the Appeal.

3. In this Appeal the substantial questions were raised that whether the lower appellate court has committed error in the interpretation and application of the provisions of Sec. 96(4) of the Code of Civil Procedure; and that whether learned judge omitted to read and/or misread the material evidence and findings of the

case before the defendant admitted his signature on writing (Exh.39) and when the trial court disbelieved the defendants version as to the defendant having put his signature on stamp and yet on the blank paper and in view of that finding the onus to rebut the writing - Exh.39 lies on the defendant; that whether in the facts and circumstances of the case, the lower appellate court committed substantial error of law in ignoring the proved factum of settled accounts between the parties and not appreciating that the burden of proof lies on the defendant to disprove the settlement of accounts and determination of the amounts stated in Exhibit - 39.

4. The reply to the above substantial questions have been given by the District Court in its judgment dated 21st September, 1981. When the execution of the document

in question is not proved, there is no presumption as to the passing of the consideration and therefore there was no issue of law point is involved in the matter. This court in the matter of MAHADEVBHAI KUBERBHAI vs. CHGATURBHAI MAJIBHAI, reported in 1984 (4) GLR (UJ) has observed as under :

" Mr. M.I. Patel submitted that the trial court has not come to a specific conclusion that the evidence of the plaintiff is not believed. When the trial court gave a finding that the pronote is not proved and also went to the extent of saying that it is forged pro-note, can it be said that he believed the evidence of the plaintiff? Now if it is a case of believing or not believing the evidence of the parties led before the trial court, can it be said that it involves point of law? Under the circumstances, the learned appellate Judge has committed an error in allowing the Appeal. "

4. In that view of the matter, in this case the District Court was correct in its finding that no question of law was involved and rightly rejected the appeal. The decision requires no interference at all and hence this Second Appeal is dismissed with no order as to costs.

p.n.nair